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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 260

MILDRED GIBBONS, NAPOLEON C. ZBYSZEWSKI, AILEEN BIEL, IDA JACOBSON, GEORGE PAPANTONATOS, LEON PERMAN, HYMAN M. STEIN, ALLEN KLEIN, KUNIO SHIMIZO, ET AL.,

Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

REPLY BRIEF FOR PETITIONERS.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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With respect to the Statement of the Case contained in Respondent's Brief in Opposition, Petitioner does not wish to unduly burden the record, but does respectfully make these limited remarks in reply.

(1) The evidence does not show (Respondent's Brief, p. 5) that "an attendant would supervise the activities of persons on the premises during those busiest times; would be acquainted with the workings of the machinery; would have some basic knowledge of good housekeeping, thereby

nullifying the chance of fire; and would be a person to watch over the premises and the occupants and prevent anything that might occur on those premises that would lead to the jeopardy of the occupants or the building itself which may house apartments or other property uses.'' These comments were ventured by a fireman, admittedly unfamiliar with the operation of laundromats, and are of no moment in light of the finding of the Illinois Supreme Court (Petitioners' Brief, p. 29) that the danger of fire was negligible in self-service, coin-operated laundries.

(2) The speculation set forth on page 5 of Respondent's Brief, that ''an attendant could also eliminate accumulations of water, soap and other debris on the floor, caused in part by overflowing washing machines'' is irrelevant in light of the fact that there never has been a finding or even a showing that soap on the floor has been a problem at all, much less a problem of sufficient magnitude to require the ordinance herein.

(3) The statement (Respondent's Brief, p. 5) that ''the presence of a properly instructed attendant would also insure the maintenance of hygienic and sanitary conditions in such establishments as well as to maintain compliance with the ventilation requirements of the Municipal Code of Chicago, particularly where, as in such places of business, gas used for heating is being piped into the premises and where an accumulation of moisture and humidity is to be found'' is inaccurate. Neither the master nor either of the state courts so found, and the evidence in this case shows that the attendants never have performed such tasks, they being assigned to the maintenance men whose training has better fitted them for such functions (Petitioners' Brief, p. 29).

(4) As is made plain on page 6 of its brief, Respondent, in advancing its detriment to crime theory of justification for the ordinance herein, of course, runs afoul of certain

of the positive evidence, in particular, that which shows the only two murders relating to laundromats involved only laundromats which had attendants; in one case, the attendant murdered someone, and in the other case, the attendant was murdered. Respondent apparently attempts to circumvent the problem by taking the position that Petitioner made no showing that the attendants involved in these two cases could have qualified for licensing under the subject ordinance. Obviously, since these attendants are either dead or in prison, it is difficult to show their qualifications; nevertheless, it would seem reasonable to assume that they probably were of legal age, temperate habits, good moral character, able to speak and understand the English language, had evidence of employment or occupation or residence for two years, were familiar with the operations of the machines, and were familiar with risks incident to the operation of the machines and capable of taking the necessary precautions. However, even this is needless speculation, for if Respondent contends that there is a crime wave in unattended laundromats, then one crime, and probably the most serious crime, for which there should be such proof is murder. The bald fact is that on the evidence in the case at bar the only two murders took place in attended laundromats.

(5) Respondent contends (Respondent's Brief, p. 6) that crimes of larceny would decrease if an attendant were present. Robberies, of course, would increase since it is the attendant who is usually being robbed. However, it must be borne in mind that the "larcenies" to which Respondent refers are, to paraphrase the words of Respondent's witness, of the variety where $2.00 or $3.00 has been taken from the Coca Cola machine, a matter really only of concern to the owner of the laundromat. Respondent also urges that an attendant would serve to decrease and deter sex crimes, such as rape, indecent liberties and indecent

exposure. This overlooks one obvious certainty. In a marginal income industry such as this one, since the wage scale for attendants will be the bare minimum, the vast majority of these self-same attendants unquestionably will be women. Therefore, if Respondent's theory were correct, rather than cutting down on the exposure of women to the danger of sex crimes, the principal effect of this legislation will be to place a greater number of lone women in circumstances of danger than existed prior to the passage of the ordinance. This theory also overlooks the fact that there have been no instances of sexual assaults or rapes in Chicago laundromats (R. 26, p. 461).

(6) As to Respondent's contention (Respondent's Brief, p. 7) that laundromats constitute a haven for "goof ball" parties, Respondent's witness made sweeping generalizations, but when pressed for an example, could only give an instance which did not even take place in a laundromat (R. 26, p. 540), nor did the master or the chancellor or the Illinois Supreme Court make any such finding.

(7) Contrary to Respondent's suggestion (Respondent's Brief, p. 7), Petitioners' statement (Petitioners' Brief, p. 7) that at least seventy-five percent of the matters set out in the police reports were routine reports of incidents, such as juveniles congregating, not constituting crimes at all, is accurate, particularly in light of the finding of the Illinois Supreme Court (Petitioners' Brief, p. 31).

With respect to the Reasons for Denying the Writ set forth in Respondent's Brief, Petitioners respectfully make these comments in reply.

(1) Respondent suggests (Respondent's Brief, p. 8) that Petitioners urge this Court to resolve certain evidentiary issues. Petitioners do not make such a request. The findings by the Supreme Court of Illinois are clear. First, that Court concedes (Petitioners' Brief, p. 29) that the

fire and injury problem is minimal. Second, the Illinois Supreme Court makes no finding as to any particular health hazards. Third, that Court based its determination on the need of the ordinance as a deterrent to certain crimes almost entirely on the opinions of Chicago police officers that such legislation would be helpful, although the testimony of such officers clearly showed that such crimes (which they testified would be controlled by such legislation) as a practical matter were virtually non-existent in Chicago laundromats.

It is Petitioners' position before this Court that at some point in time Respondent must demonstrate a need for the particular legislation. *Nebbia* v. *New York*, 291 U. S. 502, 525 (1933); *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 298 (1936); and *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 424 (1951). It is Petitioners' further position that a determination by the state courts that there were, practically speaking, no health or fire problems in Chicago laundromats and the opinions of Respondent's witnesses (which are not only unsupported but often contradicted by their own testimony as to actual, specific crimes) do not demonstrate such a need. Accepting the facts as they are, it is impossible to find a legislative problem whose solution requires this ordinance.

(2) Respondent (Respondent's Brief, p. 15) accuses Petitioners of taking liberties with the record herein and sets forth certain of the testimony of Captain James P. Hackett as an example of such. For instance, Petitioners (Petitioners' Brief, p. 12) attributed to Captain Hackett the factual testimony that in his district "there were no attacks on women in laundromats." This, of course, is exactly what the officer said (R. 26, p. 543). In order not to take the officer's testimony out of context, in the next sentence of their brief (Petitioners' Brief, p. 12) Petitioners set out the further testimony of Captain Hackett

that "There were attacks on women in the streets, but these had occurred after they had left the lighted laundromat, such attacks being caused by the fact that the women were on the streets at night, not that they had been to the laundromat."

In viewing the additional remarks of Captain Hackett, as set out by Respondent at pages 15 and 16 of its Brief, that he *preferred* the laundromat to be closed during certain hours and that he was *worried* about someone grabbing a woman going home and that he had *heard* of such incidents being reported in the past, such hearsay, personal preference, concern and speculation do not change in any way his actual factual testimony that he *knew* of no attacks on women *in laundromats,* but that he *knew* of attacks on women *in the streets after* leaving the laundromat, such attacks being caused by the fact that the women were on the streets at night, in the same manner as they would be on the streets at night if they went to a movie or a drug store, and not being caused by the fact that they had been to a laundromat.

Without going into the matter in any greater detail, Petitioners are confident that the Court will find the testimony attributed to Respondent's witnesses by Petitioners to be accurate. In addition, in reviewing the testimony of such witnesses, it should be borne in mind that from the thousands and thousands of police officers at its disposal, Respondent selected these officers in order to put its best foot forward. It can be assumed that the testimony of these officers was reviewed beforehand by competent counsel, and that such factual evidence, aside from the obvious hearsay and conjecture, as was presented by Respondent on crime in Chicago laundromats represents all the evidence that could be mustered.

CONCLUSION.

Petitioners respectfully urge this Court that viewing the findings of the state courts and the evidence submitted thereto in the light most favorable to Respondent, there is no legislative problem with respect to coin-operated, self-service laundries in the City of Chicago requiring this totally unnecessary legislation whose financial impact will work extreme hardship on a number of small business people.

Petitioners accordingly pray that their petition for a writ of certiorari be granted.

Respectfully submitted,

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